

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

United States of America,	)	CRIMINAL NO. 3:04-74-CMC
	)	
v.	)	<b>OPINION and ORDER</b>
	)	
David K. Simpson,	)	
	)	
Defendant.	)	
_____	)	

Defendant, proceeding through counsel, has filed a motion for relief under 28 U.S.C. § 2255. ECF No. 62. Defendant contends he is entitled to relief pursuant to the recent Supreme Court decision in *Johnson v. United States*, 576 U.S. \_\_\_, 135 S. Ct. 2551 (2015).

Defendant previously filed a motion for relief pursuant to 28 U.S.C. § 2255 on May 9, 2005. *See Simpson v. United States*, D.S.C. Civil Action No. 3:05-1351-CMC. On August 26, 2005, the court granted summary judgment to the Government and the § 2255 motion was dismissed with prejudice. D.S.C. Civil Action No. 3:05-1351-CMC, ECF No. 11.

The current motion is a successive § 2255 motion. Defendant's failure to seek permission to file a second or successive petition in the appropriate court of appeals prior to the filing of the petition in the district court is fatal to the outcome of any action on the petition in this court. Prior to filing a second or successive petition under § 2255, Defendant must obtain certification by a panel of the Fourth Circuit Court of Appeals allowing him to file a second or successive petition. As provided in 28 U.S.C. § 2244, "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). *See also* Rule 9 of the Rules Governing 2255 Proceedings ("Before presenting a second or successive motion,

the moving party must obtain an order from the appropriate court of appeals authorizing the district court to consider the motion . . .”). This he has not done.<sup>1</sup>

The requirement of petitioning a court of appeals (in this instance, the Fourth Circuit) for permission to file a second or successive motion is jurisdictional. Therefore, Defendant’s failure to move for permission in the Fourth Circuit Court of Appeals prior to filing this § 2255 motion is fatal to any action in this court. This motion is dismissed as this court is without jurisdiction to consider it.

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
SENIOR UNITED STATES DISTRICT JUDGE

Columbia, South Carolina  
November 5, 2015

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<sup>1</sup>Attached to Defendant’s § 2255 motion is a “Request under 28 U.S.C. § 2244 for Order Authorizing the District Court to Consider Successive Application to Correct a Sentence of a Person in Federal Custody.” ECF No. 62-1. This court has no authority to act on this motion. Permission must be sought in and granted by the Fourth Circuit Court of Appeals.